



**COMMONWEALTH of VIRGINIA**  
*DEPARTMENT OF ENVIRONMENTAL QUALITY*

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

**PIEDMONT REGIONAL OFFICE**

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Robert G. Burnley  
Director

Gerard Seeley, Jr.  
Piedmont Regional Director

**AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION  
ORDER BY CONSENT  
ISSUED TO  
POWHATAN READY MIX - Flat Rock  
Permit No. 51959**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §10.1-1309 and §10.1-1316, between the Air Pollution Control Board and Powhatan Ready Mix - Flat Rock, for the purpose of resolving certain violations of environmental law and/or regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.

6. "Powhatan Ready Mix " means Powhatan Ready Mix - Flat Rock, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "Facility" means the Powhatan Ready Mix - Flat Rock located at 2430 Batterson Road, Powhatan, County, Virginia.
8. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. "Permit" means Construct and Operate Permit, which became effective September 21, 2001.
10. "O&M" means operations and maintenance.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Powhatan Ready Mix owns and operates a Concrete Batch Plant in Powhatan County, Virginia. This facility is the subject of a Construct and Operate permit issued on September 21, 2001.
2. On May 07, 2004, Department of Environmental Quality ("DEQ") Piedmont Regional Office staff conducted an inspection of Powhatan Ready Mix Flat Rock located at 2430 Batterson Road, Powhatan, Virginia. Based on the inspection, DEQ staff has reason to believe that Powhatan Ready Mix may be in violation of the Permit issued on September 21, 2002. The following contains the staff's factual observations and identifies the permit conditons:
  - Condition #5 - Emission Controls - Particulate emissions from the transfer of cement to the Truck Mixer shall be controlled by the C&W Manufacturing fabric filter with a minimum control efficiency of 99%. The shroud/skirt affixed to the loadout boot was torn allowing excess emissions.
  - Condition #8 - Monitoring Devices – the process/control monitoring device used to continuously measure the differential pressure drop across the fabric filter shall be observed by the permittee with a frequency of not less than once per day. The permittee shall keep continuously record measurements from the process/control monitoring device. During the inspection it was observed that the pressure drop readings were logged up to June 2003, however no entries were made subsequent to this date.
  - Condition #9 – Production – the production of concrete shall not exceed 60 tons per hour (30 cubic yards per hour) or 80,000 tons per year (40,000 cubic yards per year), calculated monthly as the sum of each consecutive 12 month period. Additional information was requested during the May 7, 2004 inspection. The requested information was received on May 11, 2004,

documented an exceedance of the 40,000 cubic yards per year, calculated monthly as the sum of each consecutive 12 month period. Specifically, March and April 2004, production was 42,274 and 44,567 cubic yards respectively.

- **Condition #23 – Maintenance/Operating Procedures** - The permittee shall take the following measures in order to minimize the duration and frequency of excess emissions, with respect to air pollution control equipment, monitoring devices, and process equipment which affect such emissions: (a) Develop a maintenance schedule and maintain records of all scheduled and non-scheduled maintenance; (c) Have available written operating procedures for equipment; (d) Train operators in the proper operation of all such equipment and familiarize the operators with the written operating procedures. The permittee shall maintain records of the training provided including the names of trainees, the date of training and the nature of the training. No maintenance schedule or log, written operating procedures or training documentation was available

#### **SECTION D: Agreement and Order**

1. Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1316(C), orders Powhatan Ready Mix, and Powhatan Ready Mix voluntarily agrees, to pay a civil charge of \$6,149.00 within 30 days of the effective date of the Order in settlement of the violation cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

Payment shall include the Federal Tax Identification Number for the Facility.

2. Submit a permit application (Form 7) including but not limited to a request to increase production of concrete for the facility within 30 days of the effective date of the Order

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Powhatan Ready Mix, for good cause shown by Powhatan Ready Mix, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves the violation specifically identified herein, including those matters addressed in the Notice of Violation issued to Powhatan Ready Mix by DEQ on July 12, 2004. This Order shall not preclude the Board or

the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

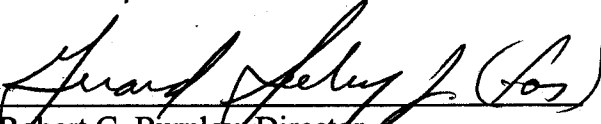
3. For purposes of this Order and subsequent actions with respect to this Order, Powhatan Ready Mix admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Powhatan Ready Mix consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Powhatan Ready Mix declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Powhatan Ready Mix to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Powhatan Ready Mix shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Powhatan Ready Mix shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Powhatan Ready Mix shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;

- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

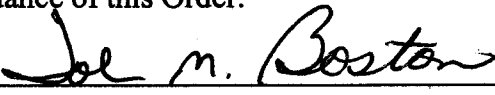
Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Powhatan Ready Mix. Notwithstanding the foregoing, Powhatan Ready Mix agrees to be bound by any compliance date, which precedes the effective date of this Order.
- 11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Powhatan Ready Mix. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Powhatan Ready Mix from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
- 12. By its signature below, Powhatan Ready Mix voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of Sept 14, 2004.

  
Robert G. Burnley, Director  
Department of Environmental Quality

Powhatan Ready Mix voluntarily agrees to the issuance of this Order.

By:   
John Boston  
Secretary

Date: 9-14-04

Commonwealth of Virginia

City/County of Chester Field

The foregoing document was signed and acknowledged before me this 14<sup>th</sup> day of  
September, 2004, by John M. Boston, who is  
(name)

SECRETARY of Powhatan Ready Mix, on behalf of the Corporation.  
(title)

Glenn C. Ashm  
Notary Public

My commission expires: 9-30-04